

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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In re:

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PLR-118535-09  
Date:  
July 29, 2009

### LEGEND:

Taxpayer =

Dear :

This responds to your letter dated April 3, 2009, in which you request rulings related to §§ 61 and 170 of the Internal Revenue Code.

### RULINGS REQUESTED

The following rulings are requested:

(1) The portion of the purchase price Taxpayer pays a charity for scrip that Taxpayer can either receive back in cash or allow the charity to retain ("rebate") does not constitute gross income under § 61;

(2) The amount of the rebate that Taxpayer elects not to receive in cash and allows a charity to retain is a charitable contribution deductible under § 170.

### FACTS

Taxpayer is an individual who purchases scrip from an organization described in § 170(c) ("charity"). The charity purchases the scrip at a discount but sells the scrip at face value to individuals such as Taxpayer. Thus, for scrip with a face value of \$ that the charity purchases at a % discount, Taxpayer pays the charity \$ , and the charity's cost for the scrip is \$ .

As part of Taxpayer's purchase of scrip, the charity gives Taxpayer the option of receiving in cash a portion of the difference between the face value of the scrip and the charity's cost for the scrip (\$X<sup>1</sup>). That is, at the time of purchase, the charity provides Taxpayer two options: (1) Taxpayer may elect to receive \$X in cash, or (2) Taxpayer may elect to allow the charity to retain \$X.

Taxpayer's proposed transaction:

Taxpayer plans to purchase scrip at face value from the charity. At the time of Taxpayer's purchase, Taxpayer will elect not to receive \$X in cash in favor of allowing the charity to retain \$X.

### LAW AND ANALYSIS

Section 61 provides that gross income means all income from whatever source derived. A rebate received by a buyer from the party to whom the buyer directly or indirectly paid the purchase price for an item is an adjustment in purchase price, not an accession to wealth, and is not includible in the buyer's gross income. See Rev. Rul. 76-96, 1976-1 C.B. 23, as modified by Rev. Rul. 2005-28, 2005-1 C.B. 997.

A deduction for contributions and gifts to or for the use of organizations described in § 170(c) will be allowed to the extent payment of the charitable contribution is made within the taxable year. Sec. 170(a). A charitable contribution must be made voluntarily and with donative intent. U.S. v. American Bar Endowment, 477 U.S. 105 (1986).

Deductions for charitable contributions are limited to a percentage of the taxpayer's contribution base for the taxable year. See § 170(b). No deduction is allowed under § 170(a) unless the donor properly substantiates the contribution as required under §§ 170(f)(8) (relating to contributions of \$250 or more) and (f)(17) (relating to all contributions of a cash, check, or other monetary gift, regardless of amount), as applicable.

Ruling request (1)—Rebate from charity:

Taxpayer first asks us to rule that, if a charity gives Taxpayer the option to receive a cash rebate of \$X of the purchase price Taxpayer pays the charity for scrip, Taxpayer will not be in receipt of gross income under § 61.

A rebate received from the party to whom the buyer directly or indirectly paid the purchase price for an item is an adjustment to the purchase price paid for the item. It is

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<sup>1</sup> Where the face value of the scrip is \$      and the charity's cost for the scrip is \$      , \$X is an amount less than \$      (i.e., the difference between the face value and cost of the scrip, with such difference reduced by the charity's additional cost to provide Taxpayer with the option of receiving an amount in cash).

not an accession to wealth and is not includible in the buyer's gross income. See Rev. Rul. 76-96, 1976-1 C.B. 23, as modified by Rev. Rul. 2005-28, 2005-1 C.B. 997.

In this case, Taxpayer purchases scrip from the charity and has the option to receive a cash rebate of \$X. In lieu of receiving cash, Taxpayer may allow the charity to retain the \$X rebate. In either case, this rebate constitutes an adjustment to the purchase price of the scrip and, consequently, is not includible in Taxpayer's gross income.

Ruling request (2)—Contribution of rebate:

Taxpayer also asks us to rule that, if Taxpayer elects to allow the charity to retain the \$X Taxpayer could have received in cash, \$X will be a charitable contribution under § 170.

Taxpayer in this case may elect to receive a rebate in cash or to allow the charity to retain the rebate. This program, therefore, is distinguishable from the program in American Bar Endowment. The opportunity for Taxpayer to elect whether rebates will be retained by the charity or received in cash by Taxpayer renders the payments in this situation voluntary.

Accordingly, if Taxpayer chooses the option of allowing the charity to retain the \$X and complies with all other requirements under § 170, then Taxpayer is treated as making a charitable contribution in the amount of \$X in the taxable year Taxpayer otherwise would have received the \$X in cash.

### CONCLUSIONS

(1) The portion of the purchase price Taxpayer pays a charity for scrip that Taxpayer can either receive back in cash or allow the charity to retain does not constitute gross income under § 61.

(2) The amount of the rebate that Taxpayer can receive in cash but instead allows the charity to retain constitutes a charitable contribution at the time Taxpayer could have received the amount in cash, to the extent provided in § 170.

The charitable contributions that are the subject of this ruling request will be deductible only if all other requirements under § 170 (including substantiation requirements under §§ 170(f)(8) and (f)(17)) are met, subject to the percentage limitations of § 170(b).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in

this letter. In addition, no opinion is expressed or implied on whether any aspect of the transaction or item discussed or referenced in this letter may impact the charity's tax exempt status under section 501(c)(3) or results in unrelated business income tax under section 511.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

John P. Moriarty  
Chief, Branch 1  
Office of Chief Counsel  
(Income Tax & Accounting)

cc: